

Water Quality Standards Advisory Committee

MEETING MINUTES

Thursday, October 14, 2010 1:30 pm – 3:30 pm

Department of Environmental Services

Rooms 112/113/114

29 Hazen Drive, Concord, NH

WQSAC Members Present

Name	Representing	Present	Alternate Present
Dan Blais	Home Builders and Remodelers' Association of NH		
Malcolm Butler	Water Council		
Steve Clifton	Consulting Engineers of NH		
Josh Cline	NH Rivers Council		
Sam Demeritt	NH Wildlife Federation	Yes	
Diane Hanley	NH Association of Conservation Commissions and Lakes Management Advisory Committee	Yes	
Donna Hanscom	NH Water Pollution Control Association		
John Hodsdon	NH Farm Bureau Federation	Yes	
Melissa Hoffer	Conservation Law Foundation		
Kenneth Kimball	Appalachian Mountain Club		
Tracy Lachance	Business and Industry Association	Yes	
John Magee	NH Fish & Game Department	Yes	
William McDowell	University of New Hampshire		
Mike Metcalf	NH Water Works Association	Yes	
Eileen Miller	NH Association of Conservation Districts	Yes	
Larry Morse	NH Association of Natural Resource Scientists	Yes	
Allan Palmer	Rivers Management Advisory Committee	Yes	
Kenneth Rhodes	Associated General Contractors of NH	Yes	
Peter Rice	NH Municipal Association		
Keith Robinson	US Geological Survey		
Dari Sassan	Office of State Planning		
William Schroeder	NH Lakes Association		Wendell Berry
Jasen Stock	NH Timberland Owners Association	Yes	
John Warner	US Fish & Wildlife Service		
Ellen Weitzler	EPA Region I	Yes	

Additional Meeting Attendees

Bill Arcieri (Vanassee Hangen Brustlin, Inc.)

Jeff Schloss (UNH)

Philip Trowbridge (DES)

Paul Currier (DES)

Collis Adams (DES)

Lisa Fortier (DES)

1) Introductions

The meeting began with a round of introductions.

2) Approval of the 9/9/2010 Meeting Minutes

There were no edits to the minutes. Jasen Stock motioned and Larry Morse seconded to approve the minutes. The motion passed without opposition.

3) Presentation of revised language for HB 1305

Revised language for HB 1305 as listed on the meeting handout was presented by Phil Trowbridge. The language was revised as a result of discussions between DES and RR&D staff regarding potential unintended consequences of changing the definition of surface waters of the state.

There was some discussion about how the changes to water quality standards in HB 1305 would be public noticed and whether these changes would constitute a triennial review of water quality standards. While the legislative process is public, DES agreed to issue a public notice and hold a hearing when the bill is filed to satisfy EPA requirements. HB 1305 will not meet the requirements for the triennial review. DES will have a separate process for the triennial review of water quality standards in 2011.

The committee agreed that the new language was effectively the same as the language previously approved by the WQSAC. Larry Morse motioned and Diane Hanley seconded to approve the latest version of language for HB 1305 as presented by DES. The motion passed without opposition. Ellen Weitzler (EPA) abstained.

4) Review final language for initial rulemaking proposal for Antidegradation rule changes regarding demonstration of economic or social development (Env-Wq 1708.10) and water transfers (Env-Wq 1708.12)

Paul Currier provided a brief summary of the proposed rule changes. These changes were approved by the WQSAC in November 2009. Some of the changes related to Class A waterbodies that were approved by the WQSAC were taken out by DES Senior Management. There was concern that stakeholders had not had adequate opportunity for input and that it would be better to wait for a complete overhaul of the classification system.

The rulemaking proposal going forward would create a structured process for antidegradation reviews to weigh the environmental harm and the economic benefits of projects (Env-Wq 1708.10). The proposed rule changes also would create a functional process for evaluating and permitting water transfers (Env-Wq 1708.12).

Comments on Proposed Rule Changes for Env-Wq 1708.10 (Antidegradation Alternatives Analysis)

- In the existing rule, the alternatives analysis considers economics. The way the new rule is written it would only consider environmental harm in the alternatives analysis. Economics are important for selecting alternatives because some alternatives may have a huge economic impact relative to the environmental harm.
- In Env-Wq 1708.10(c), it is not clear how a preferred alternative is selected. The alternative with the lowest environmental impact? If economics are not taken into consideration, this would lead to impracticable alternatives. For example, “non discharging alternatives” would have minimal impact on water quality but might have exorbitant costs.
- The rule should be edited to include both environmental harm and economics in the alternatives analysis and should clarify how a preferred alternative should be selected. A possible solution is to edit Env-Wq 1708.10(b) to list sections d, e, and f as also being part of the alternatives analysis.
- EPA cautions against strict cost-benefit calculations in selecting alternatives because it is difficult to quantify environmental harm in the same terms as economics. It is better to make sure that both the environmental harm and the economic benefits are clearly defined so that the public can make an educated decision.

Comments on Proposed Rule Changes for Env-Wq 1708.12 (Water Transfers)

- The proposal would require antidegradation review for any transfer even if there is no degradation. The language in Env-Wq 1708.12(a)(3) may need to be modified so that it only applies if there is degradation. The rule will need to define the process for determining degradation from a transfer.
- The intent of the rule needs to be clarified. Was the goal to require the antidegradation alternatives analysis for any transfer or only those transfers that degrade either the receiving or sending waters? (Comment emailed after the meeting)
- There is a proposal that antidegradation review would only be required for water transfers that degrade the sending or receiving water bodies. WQSAC has been over this many times before. Always we have been assured that a full antidegradation review and a full public discussion would take place before a water transfer could be approved. NH Lakes believes that a full antidegradation review should always be required. Our concern is that someone proposing a transfer has a strong incentive to minimize the risks and harms that would result. Those who might be opposed should be given the full opportunity to expose those risks and harms. That's what a full antidegradation review should accomplish.
- Existing water transfers (there are 11 in the state) would not be subject to the new rules: only new or modified transfers.
- Would it make sense to change 1708.12(a)(3) as follows: “The withdrawal from the source water and transfer to the receiving water have both been reviewed ~~as significant impacts~~ under the process specified in Env-Wq 1708.10 and determined to meet the criteria specified for approval.” The word “significant” can be confusing. If the goal is for both aspects of the transfer to be independently reviewed under 1708.10 in the same manner that significant impacts are, can we just refer to the process? (Comment emailed after the meeting)

DES will consider incorporating these suggested edits before going to rulemaking.

5) Establish subcommittees and schedules for a comprehensive review of water quality standards

The group brainstormed goals and next steps for the classification system overhaul. The ideas were:

Goals for the new classification system

- Expanded list of options for designated uses
- Useable antidegradation process
- Inconsistencies eliminated in rules and statutes
- New RSA chapter that just contains the water quality standards
- Improvement over the current system that builds on what is currently working
- Efficient system for DES and the regulated community
- Increased flexibility (i.e., changes are easier to make). Put more details in rule and guidance documents, less in statute.
- Understandable and useful for conservation commissions and watershed organizations
- Facilitates operation of public water supplies
- Feasible for assessing all waters (e.g., how many assessment units are feasible to monitor and report on)
- Uses a watershed approach

Next steps

- History lesson regarding water quality standards in New Hampshire and United States
- Understand what is not working with the current system and what is
- Distribute reference notebooks
- EPA presentation on federal requirements and water quality standards in other New England states
- Agree on a concise list of goals and priorities
- Breakdown the problem and establish subcommittees

6) Other Business

Not discussed

7) Adjourn

The meeting was adjourned at 3:45 pm